

DRAFT For Discussion Only

SAN JOAQUIN RIVER PARKWAY AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT

THIS JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is made and entered into pursuant to Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the Government Code (hereinafter "the Act") by and among the following public entities:

- A. The SAN JOAQUIN RIVER CONSERVANCY, a state agency of organized within the California Natural Resources Agency established pursuant to Division 22.5 of the Public Resources Code (Section 32500 *et seq.*) (hereinafter "The Conservancy") ;
- B. The COUNTY OF MADERA, a political subdivision of the State of California and a body corporate and politic pursuant to ...(hereinafter "Madera County");
- C. The COUNTY OF FRESNO, a political subdivision of the State of California and a body corporate and politic pursuant to ...(hereinafter "Fresno County"); and
- D. The CITY OF FRESNO, a political subdivision of the State of California and a body corporate and politic pursuant to(hereinafter "Fresno City")

For the purposes of this Agreement, the Conservancy, Madera County, Fresno County and Fresno City may be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, the Parties are each "public agencies" within the meaning of California Government Code, section 6500, and authorized by their respective governing bodies to jointly exercise any power common to them pursuant to the Act; and

WHEREAS, the Conservancy has the authority to acquire, develop, manage, and preserve public lands acquired within the San Joaquin River Parkway, and other public or private lands as defined by Public Resources Code, section 32513, for the public benefit and for low-impact recreational and educational uses and wildlife protection; and

WHEREAS, Madera County, Fresno County and Fresno City also have the power and authority to acquire, manage, and preserve such lands for such purposes; and

WHEREAS, the Conservancy, Madera County, Fresno County and Fresno City share a desire to provide for a comprehensive program **for the acquisition**, development, operations, maintenance and preservation of such lands and resources; and

WHEREAS, the parties desire, by means of this Agreement, to establish an organization and procedure for such exercise of power and authority, and to provide for the organization's power and procedures;

NOW THEREFORE, in consideration of the above Recitals and of the mutual promises and agreements contained herein, the Parties mutually agree as follows.

SECTION 1. DEFINITIONS

1. Definitions. Unless the context otherwise requires, for purposes of this Agreement, the following terms shall have the meanings set forth below:

- a) Act means Articles 1 through 4, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) relating to the joint exercise of powers common to public agencies.
- b) Agreement means this Joint Exercise of Powers Agreement.
- c) Authority means this Joint Exercise of Powers Agreement.
- d) Board of Directors or Board means the governing board of the San Joaquin River Parkway Authority. The Board consists of the representatives of each public agency Party to this Agreement.
- e) Board Member means any one of the occupants of the representational seats that make up the Board of Directors of the Authority.
- f) Effective Date means the last date on which all Parties to this Agreement have executed the Agreement.
- g) Member Agency(ies) means the Conservancy, Madera County, Fresno County and Fresno City, and any other entity added to this Agreement by a subsequent amendment.
- h) Party(ies) means those entities who have executed this Agreement or any amendment to this agreement and who have not withdrawn from the Authority.
- i) Annual Budget means the budget adopted pursuant to Section 10.2 of this Agreement.

SECTION 2. PURPOSE OF AGREEMENT

2.0 There is hereby created pursuant to the Act a joint exercise of powers authority to be known as the entity "The San Joaquin River Parkway Authority" (hereinafter "Authority"). It is the intent of the Parties that the Authority shall be the entity responsible for administering this Agreement and shall be a public entity separate and apart from the Parties.

2.1 The purpose of this Agreement is to establish the Authority as a public agency, to develop and preserve park and open space lands with special emphasis on recreation and conservation projects, to operate and maintain those lands, to provide for the protection and conservation of watersheds and the development of a river parkway, and to acquire property or rights to property in those instances when the Authority Board determines that the Authority is best suited to accomplish this acquisition.

SECTION 3. TERM OF AGREEMENT/AMENDMENT

3.0 Duration and Termination. This Agreement shall become effective as of the Effective Date and shall continue in full force and effect until terminated by the mutual written consent of all Member Agencies as provided above; provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the Authority. The withdrawal of a Member Agency pursuant to Section 7.3 shall not terminate that Member Agency's responsibility to contribute to its share of any obligation incurred by the Board, including amounts determined by the Board for (1) liabilities and claims accrued during the time the agency was a Member Agency or (2) budgeted expenses for the Fiscal Year in which notice of intent to withdraw is given.

3.1. Amendment. This Agreement may be amended at any time by the written consent of the governing bodies of the Member Agencies. The purpose of any such amendment can be the addition of new Member Agencies to the Authority.

3.2. Withdrawal. Notwithstanding any other provision of this Agreement, any Party may withdraw as a Party to this Agreement provided that: (1) at the time of withdrawal, that Party has either discharged, or arranged to the satisfaction of the other Parties for the discharge of, any pending legal, environmental or financial obligations it has assumed under or pursuant to this Agreement and (2) it provides written notice of its intent to withdraw to the Executive Officer of the Authority not less than three months prior to the effective date of its withdrawal. A withdrawal from the Authority constitutes a withdrawal of that Party's representative from the Board of Directors.

3.3. Upon termination of this Agreement, the Authority forthwith shall wind up its affairs, including discharging all of its outstanding legal obligations. Personal property and funds remaining in the Authority shall be returned to the party from which the funds or personal property were obtained, except as mutually agreed by the parties. All real property owned by the Authority shall be conveyed as the Authority shall determine prior to termination of this Agreement.

SECTION 4. POWERS OF AUTHORITY

4.0. Specific Powers. Subject to the limitations set out in Section 4.1, the Authority is hereby authorized, in its own name, to do all acts necessary, convenient and appropriate for the exercise of the foregoing powers for the purposes set forth in this Agreement and to do any or all of the following:

- a) To make and enter contracts;
- b) To employ agents and employees;
- c) To lease, acquire, construct, manage, maintain or operate any building, works or improvements;
- d) To acquire property only when the Authority Board determines that the Authority is best suited to complete the transaction.
- e) To hold or dispose of property;
- f) To incur debts, liabilities or obligations, which do not constitute a debt, liability or obligation of any Member Agency;
- g) To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations, and governmental entities, provided that the Authority consents to such gifts, contributions and donations;
- h) To fix the compensation, if any, paid to legal counsel, in compliance with all applicable laws;
- i) To prescribe the duties, compensation and other terms and conditions of employment of other agents, officers and employees;
- j) To adopt reasonable rules and regulations for the conduct of the day-to- day operations of the Authority;
- k) To apply for, accept, receive and disburse grants and other aid from any agency of the United States of America or of the State of California;
- l) To sue and be sued in its own name;
- m) To invest money in the treasury, pursuant to Government Code section 6505.5, that is not required for the immediate necessities of the Authority, as the Authority determines advisable, in the same manner and on the same conditions as local agencies, pursuant to Section 5360 I of the Government Code;
- n) To carry out and enforce all provisions of this Agreement; and
- o) To exercise any and all common powers which are provided for in the Act and in Section 6588 of the Government Code, as they exist on the Effective Date of this Agreement or may hereafter be amended.

4.1 Limitation of Powers.

- a) The Authority shall have no power to acquire property by eminent domain.
- b) The Authority shall be subject to all laws, regulations and general and specific plans of any city or county in which The Authority proposes to take action.
- c) The Authority shall have no power to impose or levy general or special taxes, special benefit assessments upon property or property-related fees provided, however, that the Authority may establish the following:
 - i. a fee for a specific Authority benefit conferred or privilege granted directly to the payor that does not exceed the Authority's reasonable costs of providing the benefit or privilege;
 - ii. a fee for a specific Authority service or product provided directly to the payor that does not exceed the reasonable costs of providing the service or product;
 - iii. a charge for the Authority's reasonable regulatory costs for issuing licenses and permits, performing investigations, inspections, and audits, and administrative enforcement and adjudication thereof;
 - iv. a charge for entrance to or use of Authority property, or the purchase, rental, or lease of Authority property.
- d) For the purpose of Section 6509 of the Act, the Authority's power is subject to the restrictions upon the manner of exercising the powers as are imposed upon XX (designated member agency).

SECTION 5. GOVERNING BOARD

5.0. Creation of the Governing Board. The Authority shall be governed by a board of four (4) members, which is hereby established, and which shall be composed of one (1) representative from each Member Agency. The governing board shall be known as the "Board of Directors of the San Joaquin River Parkway Authority." All voting power shall reside in the Board.

5.1 The Authority shall be governed by its Board of Directors which shall consist of four (4) members, who shall be composed as follows:

- a) One (1) member shall be appointed by the Mayor of the City of Fresno.
- b) One (1) member shall be appointed by the Board of Supervisors of the County of Fresno.
- c) One (1) member shall be appointed by the Board of Supervisors of the County of Madera.
- d) One (1) member shall be appointed by the Board of the Conservancy.

5.2 Membership. Each member shall serve a four-year appointment and may be reappointed.

5.3 Powers of the Board. All power and authority shall be exercised by the Board of Directors.

SECTION 6. MEETINGS

6.0. The Board of the Authority shall fix by resolution the date, hour, and place for its regular meetings. Special meetings may be held as provided for in the Ralph M. Brown Act (Government Code Section 54950 et seq.).

6.1. All meetings of the Governing Board shall be called, held, and conducted in accordance with the provisions of the Ralph M. Brown Act and with such further rules of the Governing Board as are not inconsistent therewith.

6.2. The Executive Officer of the Authority shall keep, or cause to be kept, the minutes of the Governing Board's meetings, both regular and special, and shall as soon as possible after each meeting cause a copy of the minutes to be forwarded to each member of the Governing Board and to each Member Agency.

SECTION 7. QUORUM AND PROCEDURE

7.0. Quorum. A majority of the Member of the Board shall constitute a quorum necessary for the transaction of business.

7.1 Voting. Except as otherwise provided by law or this Agreement, all actions of the Board shall be approved on the affirmative vote of a majority of the Members of the Board.

7.2 Rules. Where applicable, Robert's Rules of Order, Newly Revised, shall govern the procedures of the Governing Board, except when inconsistent with the Ralph M. Brown Act. The Board may adopt from time to time such rules and regulations for the conduct of its affairs as may be required.

7.3 Provision for Bylaws. The Board may cause to be developed and may adopt, from time to time, such bylaws for the Authority to govern its day-to-day operations. Each Member Agency shall receive a copy of the bylaws developed and adopted under this Section.

7.4 Conflict of Interest Code. The Authority shall, by resolution, adopt a conflict of interest code as required by law.

SECTION 8. COMPENSATION AND OFFICE

8.0. The Members of the Board shall serve without compensation. The foregoing notwithstanding, each Party with a representative on the Board may elect to compensate its representative for services rendered to the Authority in compliance with all applicable laws of the State of California.

8.1. The Board, by resolution, shall designate a specific location at which it will receive notices, correspondence, and other communications and shall designate one of its members or employees as an "officer" for the purpose of receiving service of process on behalf of the Authority.

SECTION 9. OFFICERS AND EMPLOYEES

9.0 Chair. The Board of Directors shall elect one of its members as Chair of the Board. The term of office for the Chair of the Board shall be one year. The Chair of the Board shall preside at all meetings and shall perform such other duties as are specified by the Board of Directors.

9.1 Vice-Chair. The Board of Directors shall elect one of its members as Vice-Chair. The term of office for the Vice-Chair shall be one year. The Vice-Chair shall perform all the duties of the Chair of the Board in the absence of the Chair of the Board or in the event the Chair of the Board is unable to perform such duties and shall perform such other duties as are specified by the Board of Directors.

9.2 Executive Officer. The Authority shall be administered in accordance with the policies and directives of the Board. The Executive Officer of the Conservancy shall serve, without compensation from the Authority, as the Authority's Executive Officer unless the Governing Board, by resolution, appoints another Executive Officer. The Executive Officer shall perform the functions set forth under Government Code Section 6505.1 and such other functions as the Board may prescribe by resolution.

9.3 Secretary. The Board of Directors shall elect a Secretary who shall serve at the pleasure of the Board. The Secretary may but need not be a member of the Board of Directors. The Secretary shall be responsible for certifying the minutes and other records of the proceedings of the Board of Directors and shall perform such other duties as the Board of Directors specifies.

9.4 Treasurer and Auditor Controller. The Finance Director of the City of Fresno shall be appointed the Treasurer and an Auditor/Controller. The Treasurer shall be the depository and have custody of all money of the Authority, from whatever source, and shall have all of the duties and obligations set forth in Sections 6505 and 6505.5 of the Government Code. Such offices may be held by separate officers or employees, or combined and held by one officer or employee as the Board may elect. The Treasurer and Auditor/Controller shall serve at the pleasure of the Board.

9.5 Authority Attorney. The Attorney for the Authority may be the duly appointed and acting Attorney from one of the member agencies. The Attorney for the Authority or a designated deputy may attend all meetings of the Board of Directors; provided, however, that the absence of the Authority Attorney shall not affect the validity of any meeting. The Attorney shall perform such other duties the Board of Directors specifies.

9.6 Official Bond. Pursuant to Government Code section 6505.1, the public officer, officers or persons who have charge of, handle or have access to any property of the Authority shall file an official bond in an amount to be fixed by the Parties to this Agreement. When deemed appropriate by The Authority, a master bond may be utilized as referred to in Government Code

Section 1481, and the bond shall also comply with the requirements of Title I, Division 4, Chapter 3 of the Government Code, with those sections being deemed applicable to the Authority to the extent the Parties deems appropriate. The premium shall be paid by the Authority.

9.7 Additional Officers and Employees. The Board shall have the power to appoint such additional officers and to employ such employees, assistants, contractors, consultants, and others as may be appropriate.

9.8 Loan of Employees. To implement this Agreement the Parties may loan employees to the Authority on those terms mutually agreed to between the Authority and the loaning Party.

SECTION 10. FISCAL CONTROLS

10.0 Fiscal year. The Fiscal Year of the Authority shall be the period commencing on July 1 of each year and ending on and including the following June 30.

10.1 Interim Budget. The Board shall, within sixty (60) days of the Effective Date of this Agreement, approve an interim budget, which shall constitute the operating budget Annually until the Annual Budget is adopted.

10.2 Annual Budget. Prior to July 1 of each year, the Board shall adopt a budget for all expenses to be made by the Authority during the ensuing Fiscal year and an allocation of contributions from Member Agencies. Public funds may not be distributed by the Authority except pursuant to a budget which has been adopted by the Board, and all receipts and disbursements shall be in strict conformance with the adopted and approved budget

10.3 Funds, Accounts and Reports. There shall be strict accountability of all funds and reporting of all receipts and disbursements.

10.4 Sources of Funds. The sources of funds available to the Authority may include, but are not limited to, the following:

- a) Grants and donations received by the Authority from local, State, or Federal agencies or from individuals or businesses.
- b) Funds received from State and Federal disaster relief agencies.
- c) "In kind" contributions from Member Agencies, individuals and corporations
- d) Member Agencies may, in the appropriate circumstances: (i) make contributions from their treasuries for the purposes set forth in this Agreement; (ii) make payments of public funds to defray the cost of such purposes; and (iii) make advances of public funds for such purposes. The provisions of Government Code section 6513 are incorporated into this Agreement. The Authority may adopt a cost sharing formula for determining contributions from Member Agencies. The Authority shall arrange for the receipt of such

funds from the above sources as are available to the Authority and as are necessary for the conduct of the Authority's activities.

10.5 Accounts. Revenues or funds received or made available to the Authority from any source whatsoever, shall be deposited into accounts that may be established by the Authority, and may be expended by the Authority in any legal manner, subject to such reservations as may be imposed by the Authority from time to time.

10.6 Reports. The Treasurer shall, within 90 days after the close of each Fiscal Year, give a complete written report of all financial activities for such fiscal year to the Board of Directors and to each Member Agency. The Authority's books and records shall be open to inspection at all reasonable times by representatives of each Member Agency.

10.7 Payments and Advances. No expenditures in excess of those budgeted shall be made without approval of a revised or amended budget, which may from time to time be submitted to and approved by the Board of Directors.

10.8 Audit. The Treasurer and Auditor/Controller shall cause an annual independent audit of the accounts and records of the Authority to be made and reported in accordance with Sections 6505 through 6505.6 of the Government Code. The audit shall conform to generally accepted auditing standards. Such report shall be filed within 120 days of the end of the Fiscal Year under examination.

10.9 Procurement Methods. The Board hereby adopts the Purchasing regulation of the City of Fresno as the policies relating to procurement of services, equipment, supplies and other materials needed to accomplish the purposes of this Agreement.

SECTION 11. NON-LIABILITY OF PARTIES

11.0 The tort liability of the AUTHORITY and of all members of the Governing Board, and the executive officer and employees of the Parties, who may be loaned to the AUTHORITY, shall be controlled by the provisions of Division 3.6 of the Government Code. The provisions of Division 3.6 of the Government Code relating to indemnification of public employees and the defense of actions arising out of any act or omission occurring in the scope of their employment shall apply to all members of the Governing Board, officers, and employees of the AUTHORITY.

11.1 The Parties specify pursuant to Government Code Section 6508.1 that the debts, liabilities, contracts and obligations of the AUTHORITY shall not be the debts, liabilities, contracts and obligations of any of the Parties.

11.2 Neither the AUTHORITY nor the Governing Board shall have the power or authority to bind the Parties, or any of them to any debt, liability, contract, or obligation, or to employ any person on behalf of the Parties, or any of them.

11.3 No action or omission of the Parties or any of them shall be attributable to any other Parties to this Agreement

SECTION 12. INSURANCE

12.0 Insurance. The Authority shall maintain types and levels of insurance coverage for the Authority, and the Parties, and the officers and employees of the Parties as the Board of Directors determines to be reasonably adequate. Notwithstanding the above, the Authority shall maintain comprehensive general liability limits of no less than \$1,000,000 per occurrence for bodily injury (including death), personal injury and property damage. If general liability insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit. The Authority may self-insure in order to satisfy this requirement.

SECTION 13. CONTRIBUTION OF PARTIES

13.0 Contribution is here defined to include monetary contributions, if any, and the reasonable value of the services of any employees of any Party loaned by it to the AUTHORITY, if any.

13.1 Each Party shall, subject to the availability of funds, make an equal annual contribution to or on behalf of the AUTHORITY for purposes of this Agreement, as specified in the approved annual budget of the AUTHORITY. It is anticipated that each Party shall contribute a minimum of \$5,000 and a maximum of \$25,000 per annum to cover project management and associated administrative expense.

13.2 Section 15.1 shall not affect the mutual exchange of services between the Parties to this Agreement and the AUTHORITY without payment of any consideration other than such services. Such mutual exchange of services is hereby authorized to the extent permitted by Section 6506 of the Government Code. One or more Parties may, however, provide all or a portion of its annual contribution in the form of services to the AUTHORITY with the prior approval of the Governing Board

13.3 The Parties acknowledge that the Conservancy, as a state agency, may not enter into contracts in amounts exceeding the amount specified in the State Administrative Manual or State Contracting Manual without the approval from the California Department of General Services.

SECTION 14. NON-DISCRIMINATION

14.0 The Authority shall comply with the provisions of the State of California Non-Discrimination Compliance Statement which requires compliance with Government Code Section 12990 (a-f) and California Code of Regulations, Title 2, Division 4, Chapter 5 in matters relating to reporting requirements and the development, implementation, and maintenance of a Nondiscrimination Program. The Authority shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age (over 40), marital status, denial of family care leave a denial of pregnancy disability leave.

SECTION 15. MISCELLANEOUS PROVISIONS

15.1 Severability. If any section, clause or phrase of this Agreement or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to the other Party or to other persons or circumstances shall not be affected thereby. Each Party hereby declares that it would have entered into this Agreement, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.

15.2 Notices. Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally or by registered or certified mail, postage prepaid to the respective Parties, as follows:

To: [FILL IN MEMBER AGENCY CONTACTS]

San Joaquin River Conservancy
ATTN:

County of Madera
ATTN:

County of Fresno
ATTN:

City of Fresno
ATTN:

[Type here]

15.3 Other Obligations. The responsibilities and obligations of each Party to this Agreement shall be solely as provided in this Agreement, or as may be provided for in other agreements to be executed by the Parties.

15.4 Consent. Whenever in this Agreement or in any amendment thereto consent or approval is required, the same shall not be unreasonably withheld.

15.5 Other Agreements Not Prohibited. Other agreements by and between the Parties of this Agreement or any other entity are neither prohibited nor modified in any manner by execution of this Agreement, except to the extent there is a direct conflict with this Agreement, or any amendment thereto, in which case, this Agreement and any amendments thereto shall control.

15.6 Assignment. The rights, titles and interests of any Party to this Agreement shall not be assignable or transferable without the consent of the governing bodies of the Member Agencies.

15.7 Section Headings. The section headings herein are for convenience of the Parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

15.8 Laws of California. This Agreement is made in the State of California, under the Constitution and laws of such State, and shall be construed and enforced in accordance with the laws of such State.

15.9 Construction of Language. It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

15.10 Cooperation. The Parties recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement.

15.11 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto.

15.12 Enforcement. The Authority is hereby authorized to take any and all legal or

equitable actions, including but not limited to an injunction and specific performance, necessary or permitted by law to enforce this Agreement.

15.13 Integration. This Agreement constitutes the full and complete Agreement of the Parties.

15.14 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

15.15 Participation Goals. The participation goals specified in Government Code Section 6522 are by this referenced incorporated herein and shall apply to contracts executed by the Authority.

15.16 Amendment to Agreement. The provisions of this Agreement may be amended upon the adoption of a resolution to amend by the governing body of each Party.

15.17 Statutory Notice Requirements. Within thirty (30) days after the date on which all of the Parties have executed this Agreement or any amendment hereto (whichever the case may be), the Authority shall cause a notice of such Agreement or such amendment to be prepared and filed with the office of the Secretary of State for the State of California in accordance with the requirements of Government Code section 6503.5.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative.

SAN JOAQUIN RIVER CONSERVANCY

By: _____
John M. Shelton, Executive Officer

Date: _____

CITY OF FRESNO

By: _____
Name, Title

Date: _____

COUNTY OF FRESNO

By: _____
Name, Title

Date: _____

COUNTY OF MADERA

By: _____
Name, Title

Date: _____

DISCUSSION DRAFT